

STATE OF MICHIGAN
IN THE CIRCUIT COURT FOR THE COUNTY OF GRAND TRAVERSE

MMH CENTERS, INC., a Delaware corporation,

Plaintiff/Counter-Defendant,

v

File No. 04-23754-CK
HON. PHILIP E. RODGERS, JR.

AMERICAN BEHAVIOR CONSULTANTS, CORP.,
a Michigan corporation, AMERICAN BEHAVIOR
CONSULTANTS, L.L.C., a Michigan limited liability
company, THIRD STRIKE, L.L.C., a Michigan limited liability
company, PATRICK LYNCH and DEBORAH LYNCH, jointly,
severally and individually,

Defendants/Counter-Plaintiffs/
Third-Party Plaintiffs,

v

PEGGY FRY,

Third-Party Defendant.

and

THIRD STRIKE, L.L.C., a Michigan limited
liability company and DEBORAH LYNCH,

Third-Party Plaintiffs,

v

PEGGY FRY,

Third-Party Defendant.

/

C. Enrico Schaefer (P43506)
Attorney for Plaintiff/Counter-Defendant
and Third-Party Defendants

John M. Roels (P26098)
Attorney for Counter-Defendant

George F. Bearup (P24647)
Jason R. Thompson (P66027)
Attorneys for Defendants/Counter-Plaintiffs
and all Third-Party Plaintiffs

pc: Deborah Lynch, Esq.

**DECISION AND ORDER DENYING
DEFENDANTS/COUNTER-PLAINTIFFS/THIRD-PARTY PLAINTIFFS'
MOTION TO MODIFY THE COURT'S
JULY 21, 2004 PRELIMINARY INJUNCTION**

This action was initially filed on May 28, 2004. On February 7, 2005, the Court entered an order granting the Plaintiff's Motion for Summary Disposition brought pursuant to MCR 2.116(C)(7) because the Court found there was a valid agreement between the parties to arbitrate their disputes. Counts I, II, III, IV, V and VI of the Plaintiff's Complaint and all claims filed by the Counter-Plaintiff and Third-Party-Plaintiff were dismissed and the Court ordered that they "shall be submitted to arbitration." The Court retained jurisdiction to enforce the preliminary injunction that it issued on July 21, 2004 and to enter a judgment on the arbitration award.

On February 17, 2005, the Court issued an Order of Administrative Closing, closing the case "to give the parties time to arrange and complete arbitration."

On March 16, 2005, the Plaintiff/Counter-Defendant and Third-Party Defendant MMH Centers, Inc. ("MMH") filed a Motion for Relief from Order of Administrative Closing. On April 8, 2005, the Court issued a Decision and Order denying that Motion. The Court stressed that its order dismissing all legal claims and stating that such claims "shall be submitted to arbitration" was not permissive but mandatory. "Failure to pursue arbitration will be considered a violation of the Court's order." Until arbitration was completed, "the Temporary Injunction and the Court's Order of Administrative Closing shall remain in full force and effect." This file lay dormant until February 10, 2006 when the Defendant/Counter-Plaintiffs/Third-Party Plaintiffs filed a Motion to Modify the Court's July 21, 2004 Preliminary Injunction.

On February 13, 2006, the Court issued a pre-hearing order, giving any opposing party 14 days from the date of the order to file and serve a response and giving the moving party 21 days from the date of the order to file and serve a reply. These time limits have now expired.

The Court dispenses with oral argument pursuant to MCR 2.119(E)(3) and issues this written decision and order. For the reasons stated herein, the Court denies the Motion.

The instant motion is nothing more than a motion for reconsideration of the Court's order denying the same relief when requested by MMH more than a year ago. No party has offered any explanation for why arbitration has not occurred.

The Court will reiterate what it said in its April 8, 2005 Order:

The Court's order dismissing all legal claims and stating such claims "shall be submitted to arbitration" is not permissive. It is mandatory. Failure to pursue arbitration will be considered a violation of the Court's order. Should the parties choose not to submit their dispute to arbitration and the limitations period runs, the Court will dismiss this entire case with prejudice.

The parties have an opportunity in the context of arbitration to conduct discovery. Once arbitration has been complete, and depending on the ruling the parties may return to this Court for further discovery and argument regarding permanent injunctive relief. Until then, the Temporary Injunction and the Court's Order of Administrative Closing shall remain in full force and effect.

The Court will **not** entertain any further filings by either party unless they first, upon a showing of good cause and a change in circumstances, obtain the Court's permission to lift the administrative stay.

IT IS SO ORDERED.

HONORABLE PHILIP E. RODGERS, JR.
Circuit Court Judge

Dated: s/ 04/20/06